

The proposed rule-making requiring implementation of the broadcast flag and banning technologies that Hollywood does not approve of must be rejected. Such a rule-making would impose significant costs on the economy and the ability of law-abiding citizens to view legally acquired content without restricting actual copyright infringement in any way. Because it would reduce the utility of digital television while simultaneously increasing its cost it could only have the effect of delaying the transition to digital television. Because the rule proposed rule would have real costs while having no benefits whatsoever, it is clearly bad public policy, and it is the FCC's duty to reject it. It is not the job of the United States government to determine winners and losers in the marketplace. It is the content industry's job to find a business model that works in the digital age, not the government's. This rule-making would increase the cost of digital television receivers while simultaneously decreasing their usefulness to the public, which can only result in fewer sales and harm to the economy. If the government attempts via a rule-making here to determine what technologies and business models will be developed, rather than allowing the free market to do so, this would only result in harm to the economy.

The proposed rule-making would actually inhibit the transition to digital television. If digital television receivers are required by law not to be able to do the things that analog equipment already can, then there will be less demand for digital television. I, for one, am not interested in buying equipment that restricts what I can do in private in my own home.

The threat that Hollywood will not allow its content to appear on digital television unless restrictions are in place is empty. If there is money to be made, they will try to sell their movies even if no restrictions are in place, just as they do now with analog television. Hollywood made the same empty threat when the VCR was first released, but as soon as they saw that there was money to be made, they released their movies on VHS and on broadcast television anyway, and it is now an important revenue source. There is no reason to believe that their threat is serious this time either.

The proposed rule-making does not restrict actual copyright infringement in any way. Instead, it would restrict the ability of law-abiding citizens to view legally-acquired content in the privacy of their own homes. Such people are the only people who would be affected. People who are determined to violate copyright would still find ways to do so, and it would only require one such person to ignore the broadcast flag and place an unrestricted version of illegal content on the Internet, and the proposed rule would do nothing to change this fact. Because of this, it is irrational to believe that this rule-making would have any effect at all on actual infringement: the only effect it could possibly have is to restrict the ability of law abiding citizens to engage in non-infringing uses, and prevent U.S. manufacturers and businesses from developing and selling new technology to honest citizens.

More seriously, the proposed rule-making would only make sense under the false assumption that all U.S. citizens are criminals who are just waiting for an opportunity to break the law. This is inconsistent with the basic principles this country was founded on, namely, the principle of innocent-until-proven-guilty, and the principles of the free market.

The supporters of the rule-making falsely claim that it would benefit most copyright holders, when in fact Hollywood represents only a tiny minority of the copyright holders in this country. According to U.S. law and the Berne convention, every American is a copyright holder. The claims of Hollywood, the

MPAA, and related lobbying groups to represent the copyright holders in this country are false. Likewise, the claim of the Copyright Protection Technical Working Group to represent either copyright holders or the public is equally false -- representatives for the public were not even invited to participate. Even if it were the case that the proposed rule would prevent infringement and benefit Hollywood, the actual copyright holders and stake-holders here are the public, and so the FCC should ignore the content industry lobbyists and the CPTWG and listen to the public. As argued above, the proposed rule-making would inevitably harm the public while producing no benefits for anybody, so it must be rejected.

In conclusion, the proposed broadcast flag requirement would harm the economy, do absolutely nothing to restrict actual copyright infringement, would hamper the ability of law-abiding citizens to do perfectly legal things, and would delay the transition to digital television. It would have significant costs and precisely zero benefits. The broadcast flag requirement is bad public policy, and must be rejected.